THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No.5221 of 2000

Dated : 10.07.2007

Between:

Smt.Meena Cooper B. W/o B.R.Cooper.

... **PETITIONER**

And:

The Collector & District Magistrate,
Visakhapatnam and others.

... RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

W.P.No. 5221 of 2000

ORDER:

This writ petition is filed questioning G.O.Ms.No.64 Social Welfare (CV1) Department, dated 02.07.1999 issued by the third respondent, whereby the third respondent rejected the appeal preferred by the petitioner against the order of cancellation of her caste certificate dated 17.03.1994.

It is the case of the petitioner that she belongs to Adi Andhra (Mala) community, which is a Scheduled Caste, and to that effect, the then Tahasildar, Visakhapatnam issued a caste certificate to her vide SR No.2034/85 dated 23.02.1985. Based on the said certificate, she secured a job as Telephone Operator-Grade II, which was reserved for Scheduled Caste, in Eastern Naval Command, Visakhapatnam. While she was working in the said department, she married one B.R.Cooper on 23.12.1989, who is a Christian, and later made an application in

August 1991 to the fourth respondent to change her name as Mrs. B.Meena Cooper from Miss. Marri Meena. Pursuant to which, the fourth respondent requested the first respondent to enquire into the social status of the petitioner. Thereafter, first respondent issued a show case notice dated 05.03.1993 to her to submit explanation within 15 days from the date of receipt of it as to why her caste certificate cannot be cancelled, for which she submitted a detailed explanation. According to her, first respondent without conducting proper enquiry and without affording any opportunity to her, cancelled her caste certificate, vide proceedings dated 17.03.1994. Aggrieved thereby, she stated to have preferred an appeal on 06.12.1994 before the third respondent. As no orders thereon have been passed, she preferred another appeal/representation dated 29.09.1997, and as same was also not disposed of by the third respondent, she filed W.P.No.14085 of 1999, which was disposed of on 12.07.1999 directing third respondent to dispose of the appeal, within a period of four weeks from the date of receipt of a copy of the said order.

Now the grievance of the petitioner is that when the said writ petition was pending, the third respondent rejected her appeal dated 29.09.1997, vide the impugned Government Order dated 02.07.1999 on the ground that it is time barred, without considering the earlier appeal filed by her. Hence, this writ petition.

The fourth respondent filed counter affidavit stating that at the time of appointment petitioner submitted a caste certificate in support of her social status as ‘Mala” community, purported to have been issued by the then Tahsildar, Visakhapatnam, and as per the Rules in force, the said certificate was referred to the first respondent, who after verification of its genuineness, cancelled the said certificate, vide

proceedings dated 17.03.1994. Therefore, she cannot claim that she belongs to Scheduled Caste. It is further stated that the petitioner was appointed as Telephone Operator Grade-II on casual basis for specific period and continued till 04.01.1994 with intermittent breaks, and she was not engaged beyond 04.01.1994.

Heard Sri V.Ajay Kumar, learned counsel for the petitioner and the learned Assistant Government Pleader for Social Welfare.

Initially, issuance of caste certificate was governed by various Government orders, and according to which, the members of Legislative Assembly, Parliament etc., were also conferred with the power of issuing caste certificates. As the same was being misused, the Government thought it fit to cancel the said Government Orders, and thereafter, G.O.Ms.No.282 was issued and the same came into existence on 19.12.1988. As per the said Government Order, the District Magistrates/Additional District Magistrates of the revenue Districts are authorized to cancel the Caste Certificates of Schedule Castes/Schedule Tribes and Backward Classes, issued by non-officials and officials duly following the procedure prescribed, and giving an opportunity to the individuals concerned to be heard.

However, the said Government Order was also found to have been misused, and therefore, to curb the evil practice of producing false community certificates by devising a strict procedure for the issuance of such certificates and prescribing deterrent punishment to those who produce false community certificates, the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 was (for short Act No.16 of 1993) enacted. The preamble of the Act is as under:

"An Act to consolidate the issue of Community Certificates relating to persons belonging to the Scheduled Castes, scheduled Tribes and Backward classes and matters connected therewith or incidental thereto.

Whereas, it has been brought to the notice of the Government that candidates who seek employment in Government Departments, Public Sector Undertakings and such other organizations and candidates seeking admission into educational institutions, against the vacancies or, as the case may be, the seats reserved for the Scheduled Castes, scheduled Tribes and Backward Classes are producing false community certificates and securing employment or seats, as the case may be;

And whereas, by securing such employment or admission on the basis of false community certificates the benefits of special provisions made for the advancement of the Scheduled castes, Scheduled tribes and the Backward Classes in the matter of public employment and educational opportunities are not reaching such Castes, tribes and classes;

And whereas, the Government have decided to curb effectively the evil practice of producing false community certificates by deriving a strict procedure for the issue of such certificates and prescribing deterrent punishment to those who produce false community certificates."

Further, as per sub-section (2) of Section 7 of Act No.16 of 1993, the appeal of the aggrieved party shall be considered by the Government, after giving the appellant an opportunity of being heard and **subject to such rules as may be prescribed**. But, nowhere in Act No.16 of 1993, it is mentioned that it has retrospective effect.

Admittedly, during the pendency of appeal preferred by the petitioner herein, the Government of A.P., promulgated, Andhra Pradesh Scheduled Castes, Scheduled Tries, and Backward classes

– Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short "the Rules"), which came into force w.e.f. 16.05.1997. As per the Rules the authorities shall follow the procedure prescribed, before cancelling the caste certificate. Thus, the petitioner challenged the cancellation of caste certificate before the Rules came into force. When it is the main contention of the petitioner that before cancelling her caste certificate, the first respondent has not afforded any opportunity to her to establish her case, the respondents cannot say that after due enquiry her caste certificate was cancelled. It is seen from the orders of the original authority as well as the appellate authority that based on the report of the second respondent, the first respondent cancelled the caste certificate of the petitioner. It is thus clear that sufficient opportunity was not given to the petitioner to put forth her case and contest the matter.

Apart from this, petitioner has not preferred the appeal within 30 days from the date of receipt of the order of cancellation. Though she states that she preferred the appeal on 06.12.1994, there is no material on record to that effect. However, having regard to the fact that the community status of the petitioner is involved and the appeal of the petitioner was rejected merely on the ground that it is time barred and not on merits, and in view of the fact that the decision rendered will have far-reaching consequences on the children of the petitioner, interest of justice would be met if the petitioner is given one more opportunity to contest in the appeal, which will have to be considered afresh and decided in accordance with law by the appellate authority. Therefore, this Court is of the view that the order impugned cannot be sustained.

Accordingly, the writ petition is allowed and G.O.Ms.No.64

dated 02.07.1999 issued by the third respondent is hereby set aside and the third respondent is hereby directed to entertain the appeal preferred by the petitioner and pass appropriate orders, expeditiously. There shall be no order as to costs.

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10.07.2007

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